

# **EXHIBIT P**

## EX PARTE REEXAMINATION TIME LINE (USE WITH MPEP FLOWCHART)

Step No.	Step in <i>Ex-Parte</i> Reexam Flow Chart	Relevant Statute or Rules	Time Period
1.	Request for Reexamination filed	37 CFR § 1.510 Request for <i>ex parte</i> reexamination.	
2.	Notice of request Published in Official Gazette	37 CFR § 1.11 Files open to the public.	
3.	Reexamination ordered	37 CFR § 1.525 Order for <i>ex parte</i> reexamination.	
4.	Patent Owner statement	37 CFR § 1.530 Statement by patent owner in <i>ex parte</i> reexamination; amendment by patent owner in <i>ex parte</i> reexamination. (b) The order for <i>ex parte</i> reexamination will set a period of not less than two months from the date of the order within which the patent owner may file a statement on the new question of patentability, including any proposed amendments the patent owner wishes to make.	2 months or more from date of the order
5.	Third Party Requester reply	37 CFR § 1.535 Reply by third party requester in <i>ex parte</i> reexamination. A reply to the patent owner's statement under § 1.530 may be filed by the <i>ex parte</i> reexamination requester within two months from the date of service of the patent owner's statement. Any reply by the <i>ex parte</i> requester must be served upon the patent owner in accordance with § 1.248. If the patent owner does not file a statement under § 1.530, no reply or other submission from the <i>ex parte</i> reexamination requester will be considered.	within 2 months of service of patent owner's statement
6.	Examiner issues Office Action	37 CFR § 1.104 Nature of examination.	time period varies (can be over one year)

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7.	Patent Owner response after non-final action	<p><b>37 CFR § 1.550 Conduct of <i>ex parte</i> reexamination proceedings.</b></p> <p><b>(b)</b> The patent owner in an <i>ex parte</i> reexamination proceeding will be given at least thirty days to respond to any Office action. In response to any rejection, such response may include further statements and/or proposed amendments or new claims to place the patent in a condition where all claims, if amended as proposed, would be patentable.</p> <p><b>(c)</b> The time for taking any action by a patent owner in an <i>ex parte</i> reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. Any request for such extension must be accompanied by the petition fee set forth in § 1.17(g).</p> <p><b>(d)</b> If the patent owner fails to file a timely and appropriate response to any Office action or any written statement of an interview required under § 1.560(b), the prosecution in the <i>ex parte</i> reexamination proceeding will be a terminated prosecution, and the Director will proceed to issue and publish a certificate concluding the reexamination proceeding under § 1.570 in accordance with the last action of the Office.</p>	30 days – 6 months
8.	Examiner issues final rejection	<b>37 CFR § 1.113 Final rejection or action.</b>	time period varies (can be over one year)
9.	Patent Owner paper after final rejection	<b>MPEP § 2272.1</b> The statutory period for response to a final rejection in a reexamination proceeding will normally be two (2) months. If a response to the final rejection is filed, the time period set in the final rejection continues to run. The time period is	within 2 months of final rejection

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		<p>automatically extended by 1 month (in accordance with the guidelines set forth in MPEP § 2265) if the response is the first response after the final rejection and a notice of appeal has not yet been filed. Any advisory Office action using form PTOL-467, Ex Parte Reexamination Advisory Action Before the Filing of an Appeal Brief, which is issued in reply to patent owner's response after final rejection (and prior to the filing of the notice of appeal) will inform the patent owner of the automatic 1 month extension of time. It should be noted that the filing of any timely first response to a final rejection (even an informal response or even a response that is not signed) will automatically result in the extension of the shortened statutory period for an additional month. Note further that the patent owner is entitled to know the examiner's ruling on a timely response filed after final rejection before being required to file a notice of appeal. Notification of the examiner's ruling should reach the patent owner with sufficient time for the patent owner to consider the ruling and act on it. Accordingly, the period for response to the final rejection should be appropriately extended in the examiner's advisory action. See Theodore Groz &amp; Sohne &amp; Ernst Bechert Nadelfabrik KG v. Quigg, 10 USPQ2d 1787 (D.D.C. 1988). The period for response may not, however, be extended to run past 6 months from the date of the final rejection.</p> <p><b>MPEP § 2272.II</b> The practice of giving the patent owner a time period to supply an omission in a bona fide response (as set forth in MPEP § 2266.01) does not apply after a final Office action. If a bona fide response to an examiner's action is filed after final rejection (before the expiration of the permissible response period), but through an apparent oversight or inadvertence, some point necessary to fully respond has been omitted, the examiner</p>	

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		should not issue (to the patent owner) a notice of failure to fully respond. Rather, an advisory Office action (form PTOL-467) should be issued with an explanation of the omission.	
10.	Examiner considers the paper and may reopen prosecution; Patent Owner may submit amendments, affidavits and other evidence after final Office Action and prior to appeal	<b>37 CFR § 1.116 Amendments and affidavits or other evidence after final action and prior to appeal.</b>	time period varies
11.	[if Examiner does not reopen prosecution –] Patent Owner files Notice of Appeal	<p><b>37 CFR § 41.31 Appeal to Board.</b>  <b>(3)</b> Every owner of a patent under <i>ex parte</i> reexamination filed under § 1.510 of this title on or after November 29, 1999, any of whose claims has been finally (§ 1.113 of this title) rejected, may appeal from the decision of the examiner to the Board by filing a notice of appeal accompanied by the fee set forth in § 41.20(b)(1) within the time period provided under § 1.134 of this title for reply.</p> <p><b>37 CFR § 1.134 Time period for reply to an Office action.</b>  An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.</p> <p><b>MPEP § 2273 Appeal in <i>Ex Parte</i> Reexamination</b>  The period for filing the notice of appeal is the period set for response in the last Office action which is normally 2 months. The timely filing of a first response to a final rejection having a shortened statutory period for response is construed as including a request to extend the period for response an additional month,</p>	within 2-6 months

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		<p>even if an extension has been previously granted, as long as the period for response does not exceed 6 months from the date of the final rejection. The normal <i>ex parte</i> appeal procedures set forth at 37 CFR § 41.31 through 37 CFR § 41.54 apply in <i>ex parte</i> reexamination, except as pointed out in this Chapter. A third party requester may not appeal or otherwise participate in the appeal.</p>	
12.	Patent Owner files Appeal Brief	<p><b>37 CFR § 41.37 Appeal brief.</b>  <b>(a)(1)</b> Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.</p> <p><b>(e)</b> The time periods set forth in this section are extendable under the provisions of § 1.136 of this title for patent applications and § 1.550(c) of this title for <i>ex parte</i> reexamination proceedings.</p> <p><b>37 CFR § 1.550 Conduct of <i>ex parte</i> reexamination proceedings.</b>  <b>(c)</b> The time for taking any action by a patent owner in an <i>ex parte</i> reexamination proceeding will be extended only for sufficient cause and for a reasonable time specified. Any request for such extension must be filed on or before the day on which action by the patent owner is due, but in no case will the mere filing of a request effect any extension. Any request for such extension must be accompanied by the petition fee set forth in § 1.17(g). See § 1.304(a) for extensions of time for filing a notice of appeal to the U.S. Court of Appeals for the Federal Circuit or for commencing a civil action.</p> <p><b>MPEP 2274.III. EXTENSION OF TIME FOR FILING APPEAL BRIEF</b></p> <p>In the event that the patent owner finds that he or she is unable to file a brief within the time allowed by the rules, he or she may file</p>	within 2 months of Notice of Appeal, but extendable under 1.550(c).



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		a petition with the appropriate extension of time fee, to the Central Reexamination Unit (CRU) or Technology Center (TC), requesting additional time (usually 1 month), and give reasons for the request. The petition should contain the address to which the response is to be sent. If sufficient cause is shown and the petition is filed prior to the expiration of the period sought to be extended (37 CFR 1.550(c)), the CRU or TC Director is authorized to grant the extension for up to 1 month. Requests for extensions of time for more than 1 month will also be decided by the CRU or TC Director, but will not be granted unless extraordinary circumstances are involved; e.g., death or incapacitation of the patent owner. The time extended is added to the last calendar day of the original period, as opposed to being added to the day it would have been due when said last day is a Saturday, Sunday, or Federal holiday.	
13.	Appeal Conference		time period varies
14.	<i>[if examiner does not change position to add new ground of rejection]</i> Examiner's Answer	<b>37 CFR § 41.39 Examiner's answer.</b> <b>(a)(1)</b> The primary examiner may, within such time as may be directed by the Director, furnish a written answer to the appeal brief including such explanation of the invention claimed and of the references relied upon and grounds of rejection as may be necessary, supplying a copy to appellant. If the primary examiner determines that the appeal does not comply with the provisions of §§ 41.31 and 41.37 or does not relate to an appealable action, the primary examiner shall make such determination of record.	time period varies (can range from two months to over a year)
15.	Patent Owner files Reply Brief	<b>37 CFR § 41.41 Reply brief.</b> <b>(a)(1)</b> Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.	within 2 months of Examiner's Answer, extendable for good cause

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		(c) Extensions of time under § 1.136 (a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136 (b) of this title for extensions of time to reply for patent applications and § 1.550 (c) of this title for extensions of time to reply for <i>ex parte</i> reexamination proceedings.	shown
16.	[if Examiner still does not reopen prosecution—] Acknowledge Reply Brief	<b>37 CFR § 41.43 Examiner's response to reply brief.</b> (a)(1) After receipt of a reply brief in compliance with § 41.41, the primary examiner must acknowledge receipt and entry of the reply brief. In addition, the primary examiner may withdraw the final rejection and reopen prosecution or may furnish a supplemental examiner's answer responding to any new issue raised in the reply brief.	time period varies
17.	Request for Oral Hearing (not shown in flow chart)	<b>37 CFR § 41.47</b>	within 2 months after Examiner's Answer or Supplemental Examiner's Answer
18.	Oral Hearing Before BPAL (not shown in flow chart)	<b>37 CFR § 41.47</b>	timing varies; typically within 6- 12 months after filing of request for oral hearing
19.	Board Decision The Board may: (1) affirm the Examiner's decision (2) reverse the Examiner's decision	<b>37 CFR § 41.50 Decisions and other actions by the Board.</b>	time period varies



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	(3) remand the proceeding to the Examiner for further consideration; or (4) provide a new ground of rejection		
	<i>[if Board Decision is adverse to Patent Owner]</i>		
20.	Patent Owner requests rehearing <i>[Loop back to Board Decision]</i>	<p><b>37 CFR § 41.50 Decisions and other actions by the Board.</b>  <b>(b)</b> Should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, which statement constitutes a new ground of rejection of the claim. A new ground of rejection pursuant to this paragraph shall not be considered final for judicial review. When the Board makes a new ground of rejection, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:  <b>(2)</b> Request rehearing. Request that the proceeding be reheard under § 41.52 by the Board upon the same record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.</p>	Within 2 months of Board Decision
21.	OR Patent Owner Amendment and/or Showing of new	<p><b>37 CFR § 41.50 Decisions and other actions by the Board.</b>  <b>(b)</b> Should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding,</p>	Within 2 months of Board Decision

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	evidence	<p>which statement constitutes a new ground of rejection of the claim. A new ground of rejection pursuant to this paragraph shall not be considered final for judicial review. When the Board makes a new ground of rejection, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:</p> <p>(1) Reopen prosecution. Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new evidence not previously of record is made which, in the opinion of the examiner, overcomes the new ground of rejection stated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.</p>	
22.	OR Patent Owner appeals to Federal Circuit [Reexam Certificate issues only upon Court Decision]	<b>37 CFR § 1.301 Appeal to U.S. Court of Appeals for the Federal Circuit.</b> Any applicant, or any owner of a patent involved in any <i>ex parte</i> reexamination proceeding filed under § 1.510, dissatisfied with the decision of the Board of Patent Appeals and Interferences, and any party to an interference dissatisfied with the decision of the Board of Patent Appeals and Interferences, may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal: In the U. S. Patent and Trademark Office, file a written notice of appeal directed to the Director (§§ 1.302 and 1.304); and in the Court, file a copy of the notice of appeal and pay the fee for appeal as provided by the rules of the Court. For appeals by patent owners and third party requesters in <i>inter partes</i> reexamination proceedings filed under §	Within 2 months of Board Decision

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		<p>1.913, § 1.983 is controlling.</p> <p><b>37 CFR § 1.304 Time for appeal or civil action.</b></p> <p>(a)(1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences. If a request for rehearing or reconsideration of the decision is filed within the time period provided under § 41.52(a), § 41.79(a), or § 41.127(d) of this title, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In contested cases before the Board of Patent Appeals and Interferences, the time for filing a cross-appeal or cross-action expires:</p> <ul style="list-style-type: none"> <li>(i) Fourteen days after service of the notice of appeal or the summons and complaint; or</li> <li>(ii) Two months after the date of decision of the Board of Patent Appeals and Interferences, whichever is later.</li> </ul> <p>(2) The time periods set forth in this section are not subject to the provisions of § 1.136, § 1.550(c), or § 1.956, or of § 41.4 of this title.</p> <p>(3) The Director may extend the time for filing an appeal or commencing a civil action:</p> <ul style="list-style-type: none"> <li>(i) For good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or</li> <li>(ii) Upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect.</li> </ul> <p>(b) The times specified in this section in days are calendar days. The time specified herein in months are calendar months except that one day shall be added to any two-month period which</p>	

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		<p>includes February 28. If the last day of the time specified for appeal or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday.</p> <p><b>MPEP § 2279 Appeal to Courts</b></p> <p>In an <i>ex parte</i> reexamination filed on or after November 29, 1999, the patent owner may appeal the decision of the Board of Patent Appeals and Interferences only to the United States Court of Appeals for the Federal Circuit pursuant to 35 U.S.C. 141. This is based on the current version of 35 U.S.C. 141 and 35 U.S.C. 145 as they were amended by Public Law 106-113. This "current version" of 35 U.S.C. 141 and 35 U.S.C. 145 applies to appeals in reexamination, where the reexamination was filed in the Office on or after November 29, 1999. See Section 13202(d) of Public Law 107-273.</p> <p>A third party requester of an <i>ex parte</i> reexamination may not seek judicial review. <i>Yuasa Battery v. Comm'r</i>, 3 USPQ2d 1143 (D.D.C. 1987).</p> <p>While the reexamination statutory provisions do not provide for participation by any third party requester during any court review, the courts have permitted intervention by a third party requester in appropriate circumstances. See <i>In re Etter</i>, 756 F.2d 852, 225 USPQ 1 (Fed. Cir. 1985) and <i>Reed v. Quigg</i>, 230 USPQ 62 (D.D.C. 1986). See also MPEP § 1216, § 1216.01, and § 1216.02. A third party requester who is permitted to intervene in a civil action has no standing to appeal the court's decision, <i>Boeing Co. v.</i></p>	

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		Comm'r, 853 F.2d 878, 7 USPQ2d 1487 (Fed. Cir. 1988).	